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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

COMMISSION
SECRETARIAT

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

AUDIT REFERRAL: 05-10

DATE REFERRED: October 12, 2005

DATE ACTIVATED: November 7, 2005

STATUTE OF LIMITATIONS: July 30, 2006-April 6, 2009¹

RAD REFERRAL: 06L-01

DATE REFERRED: January 12, 2006

DATE ACTIVATED: February 7, 2006

STATUTE OF LIMITATIONS: December 24, 2008-April 15, 2009²

SOURCE: AUDIT REFERRAL/RAD REFERRAL

RESPONDENTS: Lockheed Martin Employees' PAC and Stephen E. Chaudet, in his official capacity as Treasurer

RELEVANT STATUTES

AND REGULATIONS: 2 U.S.C. § 432(c)(5)
2 U.S.C. § 434(b)(2)

¹ As described *infra*, this matter involves an embezzlement scenario entailing reporting violations, as well as an record keeping violation. This Office has calculated the limitations period for the audit referral in the following ways.

with respect to the reporting violation, we calculated the statute of limitations based upon the date on which the first report with inaccurate disbursement information was filed. Because LMEPAC filed its first report covering the embezzlement period on January 31, 2002 and the last such report was filed on April 6, 2004, we have determined that the statute of limitations for the reporting violation does not begin to expire until January 31, 2007. Third, with respect to the record keeping violation, we calculated the statute of limitations based upon the date on which a report without adequate supporting documentation was filed. *See* MUR 4955 (Metropolitan Life). In this matter, the first report filed without a supporting payroll deduction authorization form was on July 30, 2001 and the last such report was filed on January 1, 2003. Thus, the statute of limitations for the record keeping violation does not begin to expire until July 30, 2006.

² As described *infra*, the RAD referral involves reporting violations for the failure to disclose receipts, which seem unrelated to the embezzlement scenario. This Office has determined that the statute of limitations will begin to expire on December 24, 2008 because the first report with missing receipts was filed on December 24, 2003. The last report, which failed to disclose receipts, was filed on April 15, 2004.

2 U.S.C. § 434(b)(4)
2 U.S.C. § 434(b)(6)(B)(v)
11 C.F.R. § 104.3(a)
11 C.F.R. § 104.3(b)
11 C.F.R. § 104.14(b)(1)

INTERNAL REPORTS CHECKED: Audit Documents
 Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter was initially generated by a Commission audit pursuant to 2 U.S.C. § 438(b) of the Lockheed Martin Employees Political Action Committee ("LMEPAC" or "the Committee") covering the period January 1, 2001 through December 31, 2002. In addition, on January 12, 2006, the Reports Analysis Division ("RAD") referred LMEPAC to this Office for failure to disclose all financial activity. This Office addresses both referrals in this report.

The Commission approved the Report of the Audit Division on LMEPAC on June 6, 2005. See Report of the Audit Division on the Lockheed Martin Employees' Political Action Committee, Attachment 1. On October 12, 2005, the Audit Division referred two findings to this Office for enforcement.³ The First Finding concerns LMEPAC's failure to accurately disclose operating expenditures in its reports. See Attachment 1, Finding 1, at 7. The false disclosures resulted from an embezzlement scheme perpetrated by Kenneth Phelps, who was LMEPAC's Assistant Treasurer from August 11, 1997 to February 24, 2004. See *id.* He reported to Stephen E. Chaudet, the Treasurer of LMEPAC. As Assistant Treasurer, Phelps assumed the role of the PAC administrator, handling many of the banking and financial responsibilities and signing every disclosure report filed by LMEPAC during the audit period. See *id.*; Feb. 2, 2004 Email from Thomas M. Graham to

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1 Erica Lee, Attachment 2. Although a June 2001 corporate internal audit report recommended that
2 some of Phelps' duties be segregated to safeguard LMEPAC's assets, LMEPAC failed to
3 implement the recommendations. Indeed, it entrusted the segregation responsibilities to Phelps,
4 who embezzled a total of \$170,000 from the committee between October 2001 through December
5 2003. See Attachment 1 at 7-8; Notes from Lockheed Martin Corporate Internal Audit Report at 2,
6 Attachment 3⁴; Corporate Internal Audit, LMEPAC Review, Attachment 4.

7 Due to Phelps' misappropriation of LMEPAC funds, LMEPAC inaccurately disclosed
8 \$69,500 of its operating expenditures in reports filed during the audit period and completely failed
9 to report \$20,000 in disbursements.⁵ Attachment 1 at 7. In addition to the embezzlements noted in
10 the audit, LMEPAC has amended its disclosure reports for 2003 to disclose an additional \$55,500
11 in disbursements that represent embezzlements by Phelps that were either not disclosed or
12 inaccurately disclosed on LMEPAC's original reports. LMEPAC represented to Audit Division
13 staff during the audit that the total amount embezzled, both inside and outside of the audit period,
14 was \$170,000. If accurate, this latter figure leaves \$25,000 in embezzled PAC funds unaccounted
15 for to this day on the Committee's reports.

16 The second finding referred to this Office by the Audit Division concerns LMEPAC's
17 failure to maintain payroll deduction authorization forms ("PDA"). Attachment 1, Finding 3, at 10.
18 Audit staff found that LMEPAC did not maintain 42% (1,272 of 3,015) of PDAs required by 11
19 C.F.R. § 104.14(b)(1).

⁴ The Audit staff initially obtained and reviewed copies of the corporate internal audit report. Upon LMEPAC's request, Audit staff returned all copies of the LM Report and took relevant notes. Attachment 3 at 1.

1 Finally, RAD referred apparent reporting violations stemming from LMEPAC's failure to
2 disclose certain receipts in its 2003 December Monthly Report, 2003 Year End Report, and 2004
3 April Quarterly Report, which totaled \$194,196.67. The Federal Election Campaign Act of 1971,
4 as amended, ("Act") requires that political committees disclose receipts in accordance with 2
5 U.S.C. § 434(b), including the total amount of all receipts and itemization of receipts in excess of
6 \$200. *See* 2 U.S.C. § 434(b)(2), (3); 11 C.F.R. 104.3(a).⁶

7 Based upon the attached Audit Report, the RAD Referral, and the information below, this
8 Office recommends that the Commission: 1) open a Matter Under Review; 2) find reason to
9 believe that LMEPAC and Stephen E. Chaudet, in his official capacity as Treasurer, violated
10 2 U.S.C. §§ 432(c)(5); 434(b)(4), (6)(B)(v) and 11 C.F.R. § 104.3(b) by failing to accurately
11 account for and report certain disbursements; 3) find reason to believe that LMEPAC and Stephen
12 E. Chaudet, in his official capacity as Treasurer, violated 11 C.F.R. § 104.14(b)(1) for failing to
13 maintain contributor payroll deduction records; 4) find reason to believe that LMEPAC and
14 Stephen E. Chaudet, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(2), (3) and 11
15 C.F.R. § 104.3(a) by failing to disclose certain receipts
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⁶ While the Committee has asserted that the failure to disclose these receipts is somehow related to the embezzlement scheme, this Office has no information at this time to support this assertion. The only available information suggests that the receipts at issue were deposited into LMEPAC's bank account but were never entered into the database used by LMEPAC to complete its FEC filings. *See* Miscellaneous Filing, dated October 4, 2005 (stating that amendments made in 2003 and 2004 resulted from: "bank interest and fees which were omitted from the original filings, employee check contributions which were never entered to the database though were deposited to the bank at that time, and entries of unauthorized disbursements to Kenneth Phelps."). In any case, LMEPAC amended its 2003 December Monthly Report, 2003 Year End Report, and 2004 April Quarterly Report, which revealed that the Committee failed to disclose \$194,196.67 in receipts for the covered periods.

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1 **II. LIABILITY OF LMEPAC**

2 With respect to the Audit Referral, although the Committee's reporting errors stem from
3 Phelps' embezzlement of committee funds, the Committee nevertheless violated the Act when it
4 filed the resulting inaccurate reports. Under the Act, LMEPAC, through its Treasurer, was required
5 to account for disbursements and report them to the Commission. 2 U.S.C. §§ 432(c)(5), 434(b)(4),
6 (6)(B)(v); 11 C.F.R. § 104.3(b). Commission regulations allow an assistant treasurer to act in place
7 of a treasurer in the event of a vacancy or if the treasurer is unavailable. 11 C.F.R. § 102.7.

8 Ultimately, however, a committee treasurer is the person responsible for accounting for
9 disbursements and reporting them to the Commission. 2 U.S.C. §§ 432(c)(5); 434(b)(4)(H)(v),
10 (6)(B)(v).

11 ~~Because a political committee is an artificial entity, it can only act through individuals or~~
12 agents. Phelps had actual authority to issue disbursements, sign and file reports, and deposit
13 contributions into LMEPAC's accounts. In performing his duties, Phelps acted as an agent of the
14 Committee. Cf. 11 C.F.R. § 109.3 (defining agent, albeit with regard to coordinated and
15 independent expenditures, as "any person who has actual authority, either express or implied, to
16 engage in any [number of specified activities] on behalf of the specific persons.").

17 The Commission has applied general agency principles to political committees to hold them
18 liable for the fraudulent acts of their agents.

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See

also MUR 3585 (Tsongas) (imputing liability to committee for reporting violations resulting from agent's actions); MUR 2602 (Rhodes) (committee violated Act through acts committed by Assistant Treasurer/Finance Chairman); AO 1992-29 (Holtzman) (concluding committee received contribution checks on the date employee received them although employee, who acted without the treasurer's knowledge, left checks in drawer until after 10-day deposit period expired).

LMEPAC's response that its officials did not have knowledge of Phelps' embezzlement and that Phelps' conduct was illegal may mitigate, but it does not vitiate the violation.

LMEPAC is ultimately responsible for complying with the Act and should bear some of the responsibility for the reporting violations that resulted from Phelps' embezzlement.

III.

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IV. RECOMMENDATIONS

1. Open a MUR in AR 05-10 and RR 06L-01;
- 2.
- 3.
4. Find reason to believe that LMEPAC and Stephen E. Chaudet, in his official capacity as Treasurer, violated 2 U.S.C. §§ 432(c)(5); 434(b)(4), (6)(B)(v); 11 C.F.R. § 104.3(b);
5. Find reason to believe that LMEPAC and Stephen E. Chaudet, in his official capacity as Treasurer, violated 11 C.F.R. § 104.14(b)(1);
6. Find reason to believe that LMEPAC and Stephen E. Chaudet, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(2), (3); 11 C.F.R. § 104.3(a);
- 7.
- 8.
9. Approve the attached Factual and Legal Analyses;
10. Approve the appropriate letters.


Lawrence H. Norton
Counsel

Lawrence L. Calvert, Jr.
Deputy Associate General Counsel

Date: 3/1/06

By:


Ann Marie Terzaken
Assistant General Counsel


Jin Lee
Attorney

Attachments:

1. Report of the Audit Division on Lockheed Martin Employees' Political Action Committee
- 2.
- 3.
- 4.
- 5.
- 6.
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- 9.
- 10.
11. Factual and Legal Analysis for LMEPAC and Stephen E. Chaudet

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ATTACHMENT 1



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 8, 2005

MEMORANDUM

To: Robert W. Biersack
Press Officer

From: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Subject: Public Issuance of the Audit Report On Lockheed Martin Employees'
Political Action Committee

Attached please find a copy of the audit report and related documents on Lockheed Martin Employees' Political Action Committee, which was approved by the Commission on June 6, 2005.

The report may be released to the public on June 15, 2005.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library
DSDD Website



Report of the Audit Division on the Lockheed Martin Employees' Political Action Committee

January 1, 2001 - December 31, 2002

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

Lockheed Martin Employees' Political Action Committee (LMEPAC) is a separate segregated fund. LMEPAC qualified for multi-candidate status on May 19, 1995 and is headquartered in Arlington, Virginia. For more information, see chart on Committee Organization, p.2.

Financial Activity (p. 2)

- **Receipts**
 - Contributions from Individuals \$ 1,042,820
 - Other Receipts 2,708
 - **Total Receipts** \$ 1,045,528
- **Disbursements**
 - Contributions to Federal Candidates & Committees \$ 987,418
 - Operating Expenditures 97,430
 - Other Disbursements 17,495
 - **Total Disbursements** \$ 1,102,343

Findings and Recommendations (p. 3)

- Disclosure of Operating Expenditures (Finding 1)
- Misstatement of Financial Activity (Finding 2)
- Failure to Maintain Contributor Payroll Deduction Authorizations (Finding 3)
- Timely Deposit of Contributions (Finding 4)

¹ 2 U.S.C. §438(b).

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Part I Background

Authority for Audit

This report is based on an audit of the Lockheed Martin Employees' Political Action Committee (LMEPAC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. Except for the period November 7, 2002, through December 31, 2002, the period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are primarily those that were in effect prior to November 7, 2002.

Part II

Overview of Committee

Committee Organization

Important Dates	Lockheed Martin Employees' Political Action Committee
• Date of Registration	May 19, 1995
• Audit Coverage	January 1, 2001 – December 31, 2002
Headquarters	Arlington, Virginia
Bank Information	
• Bank Depository	1
• Bank Accounts	2 Federal Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Steve Chaudet
• Treasurer During Period Covered by Audit	Steve Chaudet
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2001	\$ 55,579
o Contributions from Individuals	1,042,820
o Other Receipts	2,708
Total Receipts	\$ 1,045,528
o Contributions to Federal Candidates & Committees	987,418
o Operating Expenditures	97,430
o Other Disbursements	17,495
Total Disbursements	\$ 1,102,343
Cash on hand @ December 31, 2002	(\$ 1,236)

Part III Summaries

Findings and Recommendations

Finding 1. Disclosure of Operating Expenditures

LMEPAC failed to accurately disclose sixty disbursements totaling \$69,500 to Mr. Kenneth Phelps, the Assistant Treasurer during the audit period. These items were unauthorized payments to Mr. Phelps, which LMEPAC disclosed as contributions and travel reimbursements to federal/non-federal candidates. LMEPAC complied with the Audit staff's recommendation by filing amended reports correctly disclosing these unauthorized disbursements. (For more detail, see p. 4)

Finding 2. Misstatement of Financial Activity

A comparison of LMEPAC's reported figures to its bank records revealed that cash-on-hand and disbursements had been misstated for calendar year 2001. LMEPAC complied with the Audit staff's recommendation by filing amended reports for calendar years 2001 and 2002 correcting the misstatements. (For more detail, see p. 6)

Finding 3. Failure to Maintain Contributor Payroll Deduction Authorizations

Based on a review of all payroll deduction authorization forms (PDAs) provided by LMEPAC, the Audit staff determined PDAs were not available for 42% of the contributors. In response to the interim audit report, LMEPAC provided a description of policy changes implemented to ensure that such authorizations are maintained in the future and have taken measures to obtain the missing PDAs noted above. (For more detail, see p. 7)

Finding 4. Timely Deposit of Contributions

The Audit staff determined that 54% of the contributions included in the payroll transmittal checks, as well as the individual contribution checks, were not deposited timely. In response to the interim audit report, LMEPAC stated that internal control procedures have been established and implemented to correct this problem. (For more detail, see p. 9)

Part IV

Findings and Recommendations

Finding 1. Disclosure of Operating Expenditures

Summary

LMEPAC failed to accurately disclose sixty disbursements totaling \$69,500 to Mr. Kenneth Phelps, the Assistant Treasurer during the audit period. These items were unauthorized payments to Mr. Phelps, which LMEPAC disclosed as contributions and travel reimbursements to federal/non-federal candidates. LMEPAC complied with the Audit staff's recommendation by filing amended reports correctly disclosing these unauthorized disbursements.

Legal Standard

Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in an election cycle, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

Background

Mr. Kenneth Phelps was the Assistant Treasurer of LMEPAC from August 11, 1997 to February 24, 2004. Mr. Phelps was responsible for the following: depositing contributions; receiving and opening bank statements; preparing and disbursing checks (which were required to have two signatures); data entering the information to create the FEC disclosure reports; and, maintaining all bank records. A Lockheed Martin Corporation internal audit report dated June 2001 recommended that some of the duties performed by the Assistant Treasurer should be assigned to other staff to ensure assets are safeguarded. It appears LMEPAC did not reassign any of Mr. Phelps' responsibilities. In October 2001, Mr. Phelps began writing checks, which according to LMEPAC officials were for unauthorized disbursements to himself. During the period covered by the audit, these 'unauthorized' disbursements totaled \$89,500.² As discussed below, \$69,500 was inaccurately disclosed and \$20,000 was not reported at all (See Finding 2). LMEPAC officials stated they were unaware of this activity until communication between the Audit staff and the Treasurer of LMEPAC regarding the upcoming Commission audit. It was at this point that LMEPAC officials discovered that Requests for Additional Information Letters from the Commission's Reports Analysis Division had not been addressed by the Assistant Treasurer. Upon discovery of Mr. Phelps' misappropriation of funds, LMEPAC stated they began an investigation and implemented procedures to improve its internal controls.

² There were additional unauthorized disbursements made subsequent to the period covered by the audit.

Facts and Analysis

LMEPAC reported sixty disbursements totaling \$69,500 as either contributions or travel reimbursements to federal/non-federal candidates. The disbursements were actually 'unauthorized' disbursements to Mr. Phelps. According to the LMEPAC officials, Mr. Phelps issued these checks to himself without knowledge or approval from the Treasurer.

At the exit conference, LMEPAC representatives were given a schedule detailing the disclosure errors. They stated they would file amended reports to correct the errors.

Interim Audit Report Recommendation

The Audit staff recommended that LMEPAC:

- Amend its reports to correctly disclose the 'unauthorized' disbursements made to Mr. Phelps; and,
- Provide any additional information that addressed:
 - The efforts of LMEPAC to prevent the misreporting of disbursements (i.e., safeguards and internal controls);
 - The details of when and how LMEPAC officials learned of the 'unauthorized' disbursements; and,
 - The identities of the individuals responsible for establishing the duties of the LMEPAC assistant treasurer position.

Committee Response to Recommendation and Audit Staff's Assessment

In response, LMEPAC filed amended reports correctly disclosing the unauthorized disbursements made to Mr. Phelps and provided additional information regarding the actions taken by Mr. Phelps and LMEPAC.

LMEPAC Counsel (Counsel) stated that the Treasurer was not aware of the unauthorized disbursements until he was contacted by the Audit staff in December 2003 regarding the commencement of the audit. Prior telephone calls and correspondence from the Commission had been intercepted by Mr. Phelps. Furthermore, Counsel stated that LMEPAC officials believed the recommendations provided in the June 2001 Lockheed Martin Corporation Internal Audit Report had been implemented by Mr. Phelps. As a result of the internal audit report, Mr. Phelps was instructed by the Treasurer to outsource the administration of LMEPAC. Mr. Phelps repeatedly assured the Treasurer that this outsourcing was 'in process' and was being delayed because of firewall security issues. Eventually, Mr. Phelps informed LMEPAC officials that the outsourcing was complete and consequently no further action was taken by LMEPAC officials. Once LMEPAC officials were made aware of Mr. Phelps "embezzlement scheme," immediate internal controls and safeguards were incorporated in the administration of the LMEPAC's operations. The disbursement process was de-centralized by check requests being made in one location and the checks being issued in another location. Monthly LMEPAC bank statements were re-directed to the corporate accounting office and an independent reconciliation was completed. Moreover, LMEPAC by-laws were amended to require an audit by an independent accounting firm and federal election law counsel once a year.

Finding 2. Misstatement of Financial Activity

Summary

A comparison of LMEPAC's reported figures to its bank records revealed that cash-on-hand and disbursements had been misstated for calendar year 2001. LMEPAC complied with the Audit staff's recommendation by filing amended reports for calendar years 2001 and 2002 correcting the misstatements.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year; and
- The total amount of disbursements for the reporting period and for the calendar year.
- Certain transactions that require itemization on Schedule B (Itemized Disbursements).
2 U.S.C. §§434(b)(1), (2) and (4).

Facts and Analysis

The Audit staff reconciled LMEPAC's reported activity to its bank records and determined that there was a misstatement of cash on hand and disbursements for calendar year 2001. The following chart details the discrepancies between the totals on LMEPAC's disclosure reports and the bank records.

2001 Committee Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance at January 1, 2001	\$62,116	\$55,579	\$6,537 overstated
Receipts	\$492,554	\$492,554	\$0
Disbursements	\$539,533	\$552,543	(\$13,010) understated
Ending Cash Balance at December 31, 2001	\$15,138	(\$4,409)	\$19,547 overstated

Disbursements – 2001

The understatement of disbursements was the result of the following:

- | | |
|--|------------------|
| • Payments Not Reported - LMEPAC did not report eight 'unauthorized' disbursements to Mr. Phelps (Assistant Treasurer). | + \$ 13,000 |
| • Bank Service Charge Not Reported | + 10 |
| Total Understatement | \$ 13,010 |

Cash Balances

Opening Cash Balance at 2001

This misstatement is likely due to reporting errors in prior periods. LMEPAC was unable to be more specific.

Ending Cash Balance at 2001

The ending cash balance was understated due to the unexplained difference of \$6,547, as well as, the misstatements noted above. This cash misstatement was carried through December 31, 2002.

Further during 2002, LMEPAC did not report 'unauthorized' disbursements to Mr. Phelps totaling \$7,000 and a payment to the Registry of Election Finance for \$5,000. The Audit staff informed LMEPAC officials of these errors.

During the exit conference the Audit staff provided LMEPAC representatives a schedule detailing the misstatements of financial activity. They stated they would amend their reports to correct the public record.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that LMEPAC amend its disclosure reports to correct the misstatements noted above.

LMEPAC complied by filing amended reports for calendar years 2001 and 2002 correcting the misstatements.

Finding 3. Failure to Maintain Contributor Payroll Deduction Authorizations

Summary

Based on a review of all payroll deduction authorization forms (PDAs) provided by LMEPAC, the Audit staff determined PDAs were not available for 42% of the contributors. In response to the interim audit report, LMEPAC provided a description of policy changes implemented to ensure that such authorizations are maintained in the future and have taken measures to obtain the missing PDAs noted above.

Legal Standard

Recordkeeping. Each political committee or other person required to file any report or statement under this subchapter shall maintain all records relevant to such reports and statements. Records to be maintained with respect to the matters required to be reported, include bank records, vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness. The Commission has determined that, under 11 CFR § 104.14(b)(1), separate segregated funds established pursuant to Part 114 of the Commission's rules

must maintain copies of Payroll Deduction Authorizations for each individual who makes any contribution(s) via automatic payroll deduction. *See, e.g.* MUR 4955 (Metropolitan Life). 11 CFR §104.14(b)(1).

Facts and Analysis

The Audit staff reviewed all PDAs provided by LMEPAC both during the audit and subsequent to the conference held at the end of fieldwork. LMEPAC contacted Lockheed Martin Corporation's various payroll centers to obtain the PDAs. According to the Treasurer, Lockheed Martin Corporation merged with numerous companies in recent years, therefore, the PDAs were not always maintained at one location.

The review revealed that LMEPAC did not maintain 42% (1,272 of 3,015³) of PDAs required to be maintained. They submitted 14% of the PDAs during fieldwork and 44% of the PDAs following the exit conference.

Interim Audit Report Recommendation

The Audit staff recommended that LMEPAC demonstrate its compliance with the recordkeeping requirements and attempt to obtain replacement PDAs for those employees whose authorizations could not be located. It was further recommended that in the future LMEPAC implement procedures to ensure that PDAs are complete and maintained in an auditable state. Copies of the procedural instructions were to be submitted with LMEPAC's response and were to include an action plan for implementation of the changes. Once these procedures were in place, the Audit staff could verify that they were adequate to assure compliance via follow-up audit work. Although LMEPAC may choose to maintain PDAs at the payroll centers, it was recommended that the copies of PDAs be maintained at the committee headquarters.

Committee Response to Recommendation and Audit Staff's Assessment

LMEPAC stated the Lockheed Corporation and the Martin Marietta Corporation merged in 1995 and became Lockheed Martin Corporation. At the time of this merger there were multiple independent payroll centers in operation throughout the corporation. The following year, the Lockheed Martin Corporation acquired another company which also had numerous payroll locations. Because of the merger and the acquisition, the original PDAs were difficult to locate, especially for some employees who had been contributing for over twenty years. However, LMEPAC officials stated they used extensive resources to locate nearly 60% of the PDAs during the audit fieldwork.

In response to the interim audit report, LMEPAC officials stated they sent letters to individuals with missing PDAs who are still employed with Lockheed Martin Corporation and who are still active contributors.⁴ LMEPAC was able to obtain 197 of these missing PDAs. Further, LMEPAC officials stated they were exploring a plan to obtain the PDAs electronically.

³ This represents the number of contributors during the audit period.

⁴ Of the 1,272 contributors missing PDAs, 633 are current active LMEPAC members.

To ensure compliance with the regulations, LMEPAC stated they have substantially merged all payroll systems into one location, have created a requirement that all PDAs be sent to the LMEPAC headquarters for permanent retention and have incorporated a review of the PDAs into the annual audit.

Finding 4. Timely Deposit of Contributions

Summary

The Audit staff determined that 54% of the contributions included in the payroll transmittal checks, as well as the individual contribution checks, were not deposited timely. In response to the interim audit report, LMEPAC stated that internal control procedures have been established and implemented to correct this problem.

Legal Standard

Deposit of Receipts. Within 10 days after the treasurer receives a contribution, it must be either:

- Returned to the contributor without being deposited; or
- Deposited into a committee bank account. 11 CFR §103.3

Facts and Analysis

The Audit staff reviewed all transmittal checks from payroll centers as well as individual contribution checks and determined that a majority of contributions was not deposited timely. The date on the check was compared to the date of deposit.⁵ The number of days between the check date and deposit date ranged from 14 to 110 days for 54% (216 of 397) of the checks.

During the exit conference the Audit staff provided LMEPAC representatives a schedule detailing the information noted above. Representatives made no comment.

Interim Audit Report Recommendation

The Audit staff recommended that LMEPAC demonstrate that the transmittal and contribution checks were deposited timely or that internal control procedures have been established and implemented to correct this problem.

Committee Response to Recommendation and Audit Staff's Assessment

In response, Counsel stated that the untimely deposits were the result of twenty payroll systems at different locations which were on a monthly schedule rather than a 10-day cycle. Consequently, in March 2004, LMEPAC implemented a system in which all the payroll deposits were wired from one payroll location on a weekly basis. Additionally, the independent audit conducted each year (See Finding 1) will review the timeliness of deposits to insure compliance.

⁵ LMEPAC did not maintain the date that it received contributions.